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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. THESSALONIAN CATRELL LOVE, Defendant and Appellant.	A153233 (Mendocino County Super. Ct. No. 16-87866)

After defendant Thessalonian Catrell Love was convicted of trafficking and other sex crimes against a minor, but before he was sentenced, he wrote jail house letters to the minor victim and her mother. He was then charged and convicted in the instant case with two counts of attempting to dissuade a witness and one count of attempted criminal threat. (Pen. Code, §§ 136.1, subds. (b)(1) & (c)(1), 422.)[1] The jury also found true allegations he had suffered two prior strike convictions, for arson several years earlier and, in the trafficking and other sex crimes case, for attempting to dissuade the minor from reporting the crimes. The court therefore sentenced defendant in the instant case as a two-strike defendant, to a term of 50 years to life in prison with the possibility of parole. It also ordered the sentence to be served consecutively to the 35-year sentence it had earlier imposed in the trafficking and sex crimes case.

[1] All further statutory references are to the Penal Code unless otherwise indicated.

Defendant claims no substantial evidence supports his conviction for attempted criminal threat, that the trial court erred in denying his *Romero*[2] motion, and the aggregate sentence in his cases constitutes cruel and unusual punishment. We conclude none of these claims have merit, and affirm.

BACKGROUND

In our opinion affirming defendant's trafficking and other sex crime convictions (case No. A152611, *Love I*), we set forth the general background of all three Mendocino County cases prosecuted against him.[3] As we therein discussed, the second case, prosecuted during the first case, was based on his escaping from custody during trial of the trafficking and sex crimes case. He resolved the escape case by pleading no contest and admitting a prior strike. We need not, and do not, repeat the background of these two cases here.

The minor victim and her mother (Mother) were expected to testify at the sentencing hearing in the trafficking and other sex crimes case. Mother had made the initial contact with police officers about the crimes, and both the minor victim and Mother had testified against defendant during the trial. To ensure the minor victim's safety, the trial court had issued a criminal protective order forbidding defendant from contacting her.

After the jury rendered its verdict in *Love I*, but before sentencing in that case and the escape case, jail staff intercepted letters written by defendant to the minor victim and Mother. The letter to Mother was addressed to her at her work address, while the one to the minor victim was addressed to her at her school. Defendant obtained Mother's work address by using an "Inmate Request Form" in which he claimed his aunt worked for

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[2] *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

[3] Defendant's motion for judicial notice of our records in case number A152611 is granted. (Evid. Code, §§ 452, subd. (d), 459.) We also take judicial notice of our opinion in that case, filed concurrently with this opinion (case No. A152611). (*In re Christy L.* (1986) 187 Cal.App.3d 753, 754, fn. 2.)

Mother's employer. Defendant admitted he "manipulated the system to [his] advantage" to get Mother's work address.

In the four-page letter to Mother, defendant wrote in part: "Why would someone like you go out of their way too [*sic*] do what you did? Why, why would you go out of your way & [without] thinking about the (out-come) just put me away like that. . . . See it's funny because you reacted without thinking, you shot first then took names later, you gambled your life, you [] rolled the dice [without] second guessing [Mother] you jump [without] a parachute, you swam w/sharks hoping Not to get Bit, you must be about that y-o-l-o life, you-only-live-once huh [Mother]. Why [Mother]? My only question, why put your life on the line. Why. You didn't Need to call the police you didn't need to interfere your daughter life & relationship. She was so happy to be w/A guy like me, it was not 'Authorized' you did Not have to get law enforcement [] involved. . . . You do realize, putting me Behind Bars Not only Effected my life? But Effected your life as well. . . . [Y]ou threw A Bomb at me Basically hoping not to get injurd [*sic*], & the Blast from the Bomb effected me yes, but it effected you too. . . . We Both got Effected by the Bomb's Blast, I came to jail & you . . . you [Mother]. I know all about you so that technically means you got hit from the Blast as well. . . . After calling the police you probably realize 'Oh-no'! I forgot, he has my information, you probably said too [*sic*] yourself, I should have not called the police but asked him to Stay Away. Oh no! I have your personal information [Mother], your birth name first & last name [Mother] Home location where you live, your Job where you work I also know your childrens first middle & last names, your vehicle lisence [*sic*] Plate # the [] model of the car I know All about you [Mother]. . . . Ready for this [Mother] not only do I know your home address & where you live . . . (I know what you look like). When I perpously [*sic*] took my case too [*sic*] trial so I can see you so I can see the person I have too [*sic*] hug when I get out of jail. . . . Remember one thing . . . (I'm not doing life) & I will have a release date & when I do, the sad part is . . . there is Nothing you can do once those gates open wether [*sic*], 4 yrs from now 7 yrs from now, or Maximum 13 yrs from now. . . . There is No Where, (Mark My . . . Words) no where you can Run, or hide too once I'm out Because I

will find you & I will hug you when I find you. I will give you the Biggest hug. You put your personal information at risk, you do know once Im out you will have to (change) change Everything, kinda sucks dosent [*sic*] it you will have to change Everything your home your number# your Appearance (LOL) shit even your name you are one dumb ass fat Bitch . . . & one last thing you won't get away from me once I'm out even if you move out of the country I'll still find you."

When officers interviewed defendant about this letter, he stated: "I was getting ready to kill myself. And then Prop 57 came out and then I heard about it weakens the strike laws, and it affects . . . basically all my charges, human trafficking and all this other stuff. [¶] . . . [¶] . . . But then I was also thinking, 'Well do I really wanna kill myself or should I just wait it out and . . . get [Mother]' . . . it's like she's already dead. . . . [¶] . . . [¶] . . . I won't even listen to Obama. I'd still go up there to [Mother] if she's still living up there. And I want you all to understand it it's like, it's not no joke, it's not no boy cry wolf, nothin' like that. It's the truth. It's automatically like, it's basically like, she's dead already. 'Cause there's no turning back." "So if [Mother] wants to take . . . my life away from me, you wanna take some of my life, Im gonna take all of you. I'm gonna take all of yours. [¶] . . . [¶] I want you to tell her that 'I'm coming.' "

In the letter to the minor victim, defendant wrote in part: "[G]uess what I'm about to be out of jail real soon! If this vote thing [goes through], prop. 57 . . . I might be out once you're 17teen." "[D]on't be running your mouth off to Anyone . . . cops–yo mom–No one, I'm serious."

A deputy district attorney and investigator met with Mother to inform her of the intercepted letters and allow her to read them. Mother found it "scary" that defendant had obtained her work address. And after reading the letter addressed to her, Mother "felt scared for my life. I felt that this was a direct threat to my life. He was threatening to kill me." She believed "once he's released from whether jail or prison that wherever I go if I change my name, have plastic surgery, whatever, he will find me and try to kill me." Mother knew defendant had escaped during trial in the sex crimes case and was

concerned he would escape again. And, in fact, defendant had attempted to escape again from the jail yard.

Defendant was then charged in a third case with two counts of dissuading or attempting to dissuade witnesses (one as to the minor victim and one as to Mother) (§ 136.1, subds. (b)(1), (c)(1)), and one count of making a criminal threat (as to Mother) (§ 422).[4] The information additionally alleged defendant had two prior strike convictions. After trial began, the court granted the prosecution's motion to amend the criminal threat count to attempt to make a threat. The jury found defendant guilty of attempt as to all three counts and found true the strike allegations.

The trial court denied defendant's *Romero* motion and thereafter sentenced him to a total term of 50 years to life with the possibility of parole, to be served consecutively to his 35-year sentence in the trafficking and other sex crimes case.

DISCUSSION

Substantial Evidence of Attempted Criminal Threat

Defendant claims no substantial evidence supports his conviction of attempted criminal threat. He asserts, specifically, that "[t]he letter [to Mother] failed to 'convey . . . an immediate prospect of execution of the threat."

"[I]n reviewing a challenge to the sufficiency of the evidence, the relevant inquiry is whether, on review of the entire record in the light most favorable to the judgment, any rational trier of fact could have found the elements of the offense beyond a reasonable doubt." (*People v. Young* (2005) 34 Cal.4th 1149, 1180.) " 'The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt.' " (*People v. White* (2015) 241 Cal.App.4th 881, 884.) The "court resolves neither credibility issues nor evidentiary conflicts," which remains "the exclusive province of the trier of fact." (*Young*, at p. 1181.)

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[4] The counts as to Mother were based on the letter defendant sent to her work address. The count as to the minor victim was based on additional, earlier conduct dissuading her from reporting the sex crimes to law enforcement.

Section 422, subdivision (a) provides in relevant part: "Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison."

"The crime of attempted criminal threat encompasses situations where a defendant intends to commit a criminal threat 'but is thwarted from completing the crime by some fortuity or unanticipated event.' [Citation.] 'For example, if a defendant takes all steps necessary to perpetrate the completed crime of criminal threat by means of a written threat, but the crime is not completed only because the written threat is intercepted before delivery to the threatened person, the defendant properly may be found guilty of attempted criminal threat.' " (*People v. Chandler* (2014) 60 Cal.4th 508, 515.)

To obtain a section 422 conviction, the prosecution must prove: " '(1) that the defendant "willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person," (2) that the defendant made the threat "with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out," (3) that the threat—which may be "made verbally, in writing, or by means of an electronic communication device"—was "on its face and under the circumstances in which it [was] made, . . . so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat," (4) that the threat actually caused the person threatened "to be in sustained fear for his or her own safety or for his or her immediate

family's safety," and (5) that the threatened person's fear was "reasonabl[e]" under the circumstances.' " (*In re George T.* (2004) 33 Cal.4th 620, 630.)

"A threat is not insufficient simply because it does 'not communicate a time or precise manner of execution, section 422 does not require those details to be expressed.' " (*People v. Butler* (2000) 85 Cal.App.4th 745, 752.)

Defendant maintains that because he was in jail when he penned the letter to Mother and because there was no evidence he "had the means to carry out the threat from custody," there was no evidence the threat conveyed an immediate prospect of execution. While acknowledging a criminal threat can be committed by a person in custody, he asserts such cases, including the following, are distinguishable.

In *People v. Wilson* (2010) 186 Cal.App.4th 789, for example, the defendant, who was a prison inmate, told a correctional officer "he had killed officers, he had done it before and would do it again, and he would find [the officer] and 'blast' him when he was released on parole in 10 months." (*Id.* at p. 795.) Rejecting the defendant's claim there was no substantial evidence of immediacy, the Court of Appeal observed a " 'threat is not insufficient simply because it does "not communicate a time or precise manner of execution, section 422 does not require those details to be expressed." ' " (*Id.* at pp. 814, 816.) "[S]ection 422 'does not require an immediate ability to carry out the threat.' [Citations.] '[W]e understand the word "immediate" to mean that degree of seriousness and imminence which is understood by the victim to be attached to the *future prospect* of the threat being carried out, should the conditions not be met.' " (*Id.* at p. 816.) Although "there was no evidence that defendant had outside contacts, demonstrated an ability to obtain weapons in prison, or had the apparent means to carry out the threat at that exact moment . . . he unequivocally told [the officer] that he would carry out that threat when he was released from custody in precisely 10 months, thus giving the threat specificity, immediacy, and a date certain." (*Id.* at p. 814.)

In *People v. Gaut* (2002) 95 Cal.App.4th 1425, 1427 the defendant was convicted of making criminal threats to his girlfriend in telephone calls from jail. He claimed on appeal "that because he was incarcerated and unable to carry out the threats there was no

immediate prospect of execution." (*Id*. at p. 1431.) Rejecting this assertion, the court explained " '[a] threat is not insufficient simply because it does "not communicate a time or precise manner of execution." ' " (*Id.* at p. 1432.) Further, the "parties' history can also be considered as one of the relevant circumstances" in determining whether the words " 'conveyed to the victim an immediacy of purpose and immediate prospect of execution of the threat.' " (*Id.* at p. 1431.) Thus, the defendant's history of threatening the victim, as well as statements in the threats about his expected upcoming release, were sufficient to uphold his conviction. (*Id.* at pp. 1431–1432.)

In *People v. Mosley* (2007) 155 Cal.App.4th 313, the defendant likewise maintained there was no evidence of the " 'immediate prospect of execution' " of his threats because they were made while he was " 'an inmate housed in a segregated module.' " (*Id.* at p. 323.) Again, the appellate court pointed out " ' "immediacy of purpose and immediate prospect of execution of the threat can be based on all the surrounding circumstances and not just on the words alone." ' " (*Id*. at p. 324.) In that case, the defendant told one of the deputies "he had 'people' at the Department of Motor Vehicles. These employees could look up [the deputy's] personal information . . . [which] would permit defendant to kill [the deputy] after being released." (*Id*. at p. 325.) The court concluded substantial evidence supported the conviction, observing "the deputies were placed in fear because of defendant's ability to obtain weapons as well as his 'connections' in the gang within the community." (*Id*. at p. 324.)

In *People v. Franz* (2001) 88 Cal.App.4th 1426, 1432, 1435–1436 (*Franz*), the defendant was convicted of making threats to witnesses after officers arrived at the scene in response to a 911 call. While the defendant was standing between an officer and the witnesses, he made " 'a gesture like this, like shush. And then ran his finger across his throat.' " (*Id.* at p. 1436.) One of the witnesses "understood defendant was threatening to 'cut my throat' if [he] said anything to the officer." (*Ibid*.) Defendant claimed "the throat-slashing gesture was made under circumstances in which no immediate threat existed." (*Id*. at p. 1439.) That was so, according to the defendant, because "the police officer was present during the threat and thereafter escorted defendant away from the

scene, and neither [witness] saw defendant again until prosecution of this matter." (*Id.* at p. 1449.) The Court of Appeal saw things differently, pointing out that "at the time of the threat, the [witnesses] did not know when they would next see defendant. . . . [T]he threat and surrounding circumstances were a reminder that the officer would not always be there to protect [the witnesses.]" (*Ibid.*)

Defendant maintains the circumstances in the instant case are distinctly different from the cases just recited. He claims that here, unlike in those cases, there is "no evidence that [he] would be released from custody for a period of several years," or that "he had any associates who would carry out his threat." He also claims that "[t]he mere possibility that a prisoner might escape from custody cannot transform the letter into an immediate threat."

We fail to see any material distinction between the preceding cases and the case at hand. The letter defendant wrote to Mother is every bit as threatening as the actions at issue in those cases, and Mother's fear and understanding that defendant was threatening her with serious harm, if not death, was equally reasonable. The circumstances, including the defendant's prior threatening conduct towards the minor victim, also demonstrate a "gravity of purpose and immediate prospect of execution of the threat" (*Franz, supra,* 88 Cal.App.4th at p. 1448) as that requirement has been explicated in the cases. Moreover, at the time defendant wrote the threatening letter to Mother, he had not been sentenced in the sex crimes and escape cases. So, while he points out he was ultimately sentenced to 35 years in prison in those two cases, he stated in his letter: "Remember one thing . . . (I'm not doing life) & I will have a release date & when I do, the sad part is . . . there is Nothing you can do once those gates open wether [*sic*], 4 yrs from now 7 yrs from Now, or maximum 13 yrs from Now. . . . [T]here is No where, (Mark My . . . Words) no where you can Run, or hide too [*sic*] once I'm out Because I will Find you." If anything, defendant's clear *attempt* to make a criminal threat was thwarted by the trial court's subsequent imposition of a period of confinement that exceeded what defendant had anticipated, which does not insulate him from criminal

liability for his clear threat to track down Mother on his release from incarceration. (See *People v. Chandler*, *supra*, 60 Cal.4th at p. 515.)

Furthermore, while there was no evidence defendant had outside gang contacts to do his bidding as in *Mosley*, the evidence showed defendant was a skilled manipulator who could convince others to carry out his plans. Defendant, himself, testified he was able to "manipulate[] the system to [his] advantage" and did so to obtain Mother's work address from jail authorities. Before that, he was able to convince employees at the minor victim's school to deliver a cell phone to her, as well as manipulating the victim and other minors into sending him nude photos. The evidence also showed there was more than a mere "possibility" defendant would escape and carry out his threats. At the time he wrote the letter to Mother, he had already escaped from custody during trial in the trafficking and sex crimes case while being transported from court to county jail and had been on the loose overnight. He subsequently tried to escape again, but was caught.

In sum, sufficient evidence supports defendant's conviction of attempted criminal threat.

Denial of Defendant's* Romero *Motion

Defendant contends the trial court abused its discretion in denying his motion to strike his two prior strike convictions under *Romero* and section 1385.[5] Those convictions were of arson in a 2010 case and dissuading a witness (the minor victim) in the trafficking and sex crimes case.

"Under section 1385, subdivision (a), a 'judge . . . may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed.' 'In *Romero*, we held that a trial court may strike or vacate an allegation or finding under the Three Strikes law that a defendant has previously been convicted of a serious and/or violent felony, on its own motion, "in

[5] Defendant "incorporates by reference the argument set forth in [case] No. A152611" regarding denial of his *Romero* motion. In our opinion in that appeal, filed concurrently with this opinion, we conclude the trial court did not abuse its discretion in denying the motion to strike his prior arson conviction.

furtherance of justice" pursuant to . . . section 1385(a).' [Citation.] We further held that '[a] court's discretionary decision to dismiss or to strike a sentencing allegation under section 1385 is' reviewable for abuse of discretion." (*People v. Carmony* (2004) 33 Cal.4th 367, 373 (*Carmony*).)

"[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, on its own motion, 'in furtherance of justice' pursuant to Penal Code section 1385(a), or in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161.) The "defendant's youth, his lack of adult prior convictions (other than his strike convictions) and lack of prison terms, and his 'current nonviolent crime,' as well as the length of the prison sentence" are appropriate factors to consider. (*People v. Wallace* (2004) 33 Cal.4th 738, 753.)

As defendant recognizes, we review a ruling on a *Romero* motion for abuse of discretion. (*Carmony*, *supra*, 33 Cal.4th at p. 376.) "In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, ' "[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review." ' [Citations.] Second, a ' "decision will not be reversed merely because reasonable people might disagree. . . ." ' [Citations.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*Id.* at pp. 376–377.)

Defendant claims the trial court "abused its discretion by largely ignoring Dr. Kastl's expert testimony concerning [his] developmental disability." He also asserts the

court abused its discretion by "ignoring [his] impulsivity and self-destructive behavior, concluding that his developmental disability was not an excuse for his crimes."

The record demonstrates the trial court did not ignore Dr. Kastl's testimony. Rather, it gave the testimony less weight than it gave other testimony. The court explained: "[T]here was testimony in this case both at the trial and in the pretrial hearings that [defendant] has at times been diagnosed as developmentally disabled. [Dr. Kastl] was all over the board about whether it was borderline or moderate or more serious, and . . . different evaluators will reach different conclusions just because different evaluators have subjective opinions that affect their ultimate conclusions." The court also contrasted an evaluation by Jessica Ferranti, M.D., an associate clinical professor of psychiatry at University of California, Davis. Dr. Ferranti opined defendant's "thought process was linear and goal-directed" and there was "no evidence [of] cognitive deficits." She concluded he had "Antisocial Personality Disorder" and attention-deficit/hyperactivity disorder, predominantly the hyperactive/impulsive type.

The trial court also did not "ignore" defendant's impulsivity and self-destructive behavior. The court observed: "[H]aving a developmental disability is not an excuse to terrorize people and that's what he'd been doing. And I didn't see anything in Dr. Kastl's testimony that caused me to conclude . . . that [defendant] doesn't have the ability to control his conduct. [¶] He does. He plainly does. He controlled his conduct in a placid and respectful manner throughout the second trial, whereas he didn't in the first trial, he didn't today. I think he's a very manipulative, a very conniving person, and I think he represents an ongoing threat to the victims in this case. . . . Not just because he continues to write letters that were the main evidence in the case, but frankly I think he's obsessed with them, maybe the mother more than the daughter. [¶] . . . [¶] . . . I think [defendant], perhaps more than the exception of one other person that I've sentenced in the last eight years, represents an extraordinary threat to public safety."

In sum, the trial court considered and weighed the evidence addressing the existence and severity of defendant's developmental disability, impulsivity and self-

destructive behavior. There was no abuse of discretion in the denial of his *Romero* motion.

Defendant's Sentence Is Not Cruel and Unusual Punishment

Defendant did not challenge the length of the sentence, 35 years, imposed in the sex crimes and escape cases. (See Opn. in case No. A152611.) He also does not directly challenge the trial court's decision to run the sentence imposed in the instant case, 50 years to life with the possibility of parole, consecutively to the sentence imposed in the sex crimes and escape cases.[6] Rather, he maintains the aggregate of the sentences in all three cases—85 years to life—constitutes cruel and unusual punishment under both the state and federal constitutions.

The Eighth Amendment to the United States Constitution, which applies to the states, prohibits the infliction of "cruel *and* unusual" punishment. (U.S. Const., 8th Amend. (italics added); *People v. Caballero* (2012) 55 Cal.4th 262, 265, fn. 1.) Article I, section 17 of the California Constitution prohibits infliction of "[c]ruel *or* unusual punishment." (Italics added.) Thus, the wording of the federal and state constitutions differs slightly. This "distinction in wording is 'purposeful and substantive rather than merely semantic. [Citations.]' [Citation.] As a result, we construe the state constitutional provision 'separately from its counterpart in the federal Constitution.' " (*People v. Palafox* (2014) 231 Cal.App.4th 68, 82, abrogated on another ground as stated in *People v. Padilla* (2016) 4 Cal.App.5th 656, 673.)

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[6] The court sentenced defendant in the instant case as follows: As to count 3, the principal term for attempted dissuasion of a witness (the minor victim) (§ 136.1, subd. (b)(1)), the court imposed the aggravated term of three years, doubled it for the first strike allegation, and imposed a sentence of 25 years to life for the second strike allegation. As to count 2, attempted dissuasion of a witness (Mother) (§ 136.1, subd. (c)(1)), the court imposed the aggravated term of four years, doubled for the first strike allegation, and imposed a sentence of 25 years to life for the second strike allegation. The court ordered the sentences on counts 2 and 3 to run consecutively. As to count 1, the attempted criminal threat (Mother), the court imposed the aggravated term of 18 months, doubled it for the first strike allegation and imposed 25 years to life for the second strike allegation, but stayed the sentence.

In *People v. Baker* (2018) 20 Cal.App.5th 711 (*Baker*), the appellate court ably summarized the law governing cruel and unusual punishment claims under the state and federal constitutions.

The court began by discussing the state constitution, observing that "[a] punishment is cruel or unusual in violation of the California Constitution 'if, although not cruel or unusual in its method, it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.' (*In re Lynch* (1972) 8 Cal.3d 410, 425 . . . (*Lynch*) [, superseded by statute on other ground as stated in *People v. West* (1999) 70 Cal.App.4th 248, 257].) Because it is the Legislature's function to define crimes and prescribe punishments, the judiciary should not interfere 'unless a statute prescribes a penalty "out of all proportion to the offense." ' " (*Baker*, *supra*, 20 Cal.App.5th at p. 723.)

The method for determining whether the penalty is " 'out of all proportion to the offense,' " the *Baker* court explained, is set forth in *Lynch*, *supra*, 8 Cal.3d 410, which "describes three 'techniques.' " (*Baker*, *supra*, 20 Cal.App.5th at p. 723.) "We first consider 'the nature of the offense and/or the offender, with particular regard to the degree of danger both present to society.' [Citation.] Next, we compare the sentence to 'punishments prescribed in the same jurisdiction for different offenses which, by the same test, must be deemed more serious.' [Citation.] Finally, we compare the sentence 'with the punishments prescribed for the same offense in other jurisdictions having an identical or similar constitutional provision.' [Citation.] The weight afforded to each prong may vary by case." (*Baker*, at p. 723, italics omitted, quoting *Lynch*, at pp. 425–427.) " 'Disproportionality need not be established in all three areas.' " (*Baker*, at p. 723, quoting *People v. Norman* (2003) 109 Cal.App.4th 221, 230.)

As to the federal Constitution, the *Baker* court observed there is some debate about the extent to which the Eighth Amendment " 'prohibits the imposition of punishment that is "excessive" or "disproportionate" in relation to the offense or offenses for which the punishment is imposed.' " (*Baker*, *supra*, 20 Cal.App.5th at p. 732.) But based on the latest United States Supreme Court decision on the subject, the court concluded it

encompasses proportionality in a narrow way to " ' "forbid[ ] only extreme sentences that are 'grossly disproportionate' to the crime." ' " (*Ibid.*)

The appellate court thus observed the state and federal approaches to cruel and unusual punishment claims largely "overlap," and both have " 'gross disproportionality' " as their " 'touchstone.' " (*Baker, supra*, 20 Cal.App.5th at p. 733.)

Defendant focuses on the first *Lynch* factor—the nature of the offense and/or offender, with particular regard to the degree of danger both present to society. (*Lynch, supra*, 8 Cal.3d at p. 425.)[7] He admits he "largely brought the situation on himself, and was without question his own worst enemy. His courtroom behavior was abysmal; he was vulgar, he had to be removed from court numerous times, spit on a probation officer, cursed at the judge, wrote threatening letters to [P.V.] and her mother from custody." He claims, however, that "as in [*People v.*] *Dillon* [(1983) 34 Cal.3d 441, abrogated by statute on other grounds as stated in *People v. Chun* (2009) 45 Cal.4th 1172, 1186]" this behavior "was the result of his own immaturity" and that unlike *Dillon*, he "neither killed nor injured anyone."

In *Dillon*, the defendant was 17 years old when he participated in the attempted robbery of a marijuana farm being guarded by an armed man, during which he panicked and shot and killed the man. (*Dillon, supra*, 34 Cal.3d at pp. 451–452.) A clinical psychologist testified the "defendant was immature in a number of ways: intellectually, he showed poor judgment and planning; socially, he functioned 'like a much younger child'; emotionally, he reacted 'again, much like a younger child' by denying the reality of stressful events and living rather in a world of make-believe. In particular, the psychologist gave as his opinion that when confronted by the figure of [the guard] armed

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[7] He briefly observes his sentence is longer than the punishment for certain other serious crimes in California, such as first degree murder by poison. He acknowledges, however, that his aggregate sentence is not for one crime, but arises out of serious crimes prosecuted in three different cases. Defendant also does not claim his sentence is disproportional to sentences for the same crimes in other states, acknowledging any comparison is "complex" and thus asserting the "sole test remains whether the punishment 'shocks the conscience and offends fundamental notions of human dignity.' "

with a shotgun in the circumstances of this case, defendant probably 'blocked out' the reality of the situation and reacted reflexively, without thinking at all. There was no expert testimony to the contrary." (*Id.* at p. 483.) The court concluded defendant's sentence of life imprisonment constituted cruel and unusual punishment. (*Id.* at p. 489.)

Defendant, in contrast, was a 25-year-old adult at the time of the crimes. He also, in contrast, did not act out of panic or stress. Rather, he engaged in a well-planned, sophisticated, months-long scheme to sexually subjugate a minor, remove her from her home, and effectively abduct her to engage in sexual acts. He interacted with numerous individuals, lying with utter aplomb and deliberation, in the course of perpetrating and attempting to perpetrate a string of serious crimes and culminating in threats to injure or kill the minor victim's Mother.

While defendant did not kill anyone, "[t]he seriousness of the threat a particular offense poses to society is not solely dependent on whether it involves physical injury." (*People v. Cooper* (1996) 43 Cal.App.4th 815, 826.) In sentencing defendant in *Love I*, the trial court stated he "treated [P.V.] horrifically in those conversations and she was afraid of him, and like a lot of victims the manifestation of their fear is the agreement to do what their perpetrator asks them to do. I have no doubt in my mind that . . . he has caused irreparable damage to this 15-year-old. [¶] She will never forget this. Her mother will never forget this. She may never be able to trust anyone much less have any sort of personal security because of the fact that [defendant] is still out here in the world." In the instant case, defendant continued to obsessively pursue and threaten both the minor and her mother.

Nevertheless, defendant claims "his conduct failed to justify the trial court's conclusion that he was a danger to society."

The United States Supreme Court has explained that in "weighing the gravity of [defendant's] offense, we must place on the scales not only his current felony, but also his long history of felony recidivism. Any other approach would fail to accord proper deference to the policy judgments that find expression in the [California] legislature's choice of sanctions." (*Ewing v. California* (2003) 538 U.S. 11, 29 (*Ewing*).) In *Ewing*,

the high court directly addressed the Three Strikes law: "When the California Legislature enacted the three strikes law, it made a judgment that protecting the public safety requires incapacitating criminals who have already been convicted of at least one serious or violent crime." (*Id.* at p. 25.) Thus, "[i]n imposing a three strikes sentence, the State's interest is not merely punishing the offense of conviction, or the 'triggering' offense: 'It is in addition the interest . . . in dealing in a harsher manner with those who by repeated criminal acts have shown that they are simply incapable of conforming to the norms of society as established by its criminal law.' " (*Id.* at p. 29.)

Accordingly, in weighing the gravity of defendant's offense, the trial court properly considered not only his current offense, but also his history of felony recidivism.

That history amply supports the court's conclusion defendant is a danger to society warranting the lengthy consecutive sentence. Only several years before his Mendocino crime spree, defendant was convicted as an adult of arson, which the court found was a serious offense in which defendant was an active participant. Indeed, the arson was of a house occupied at the time by a disabled, elderly man, and while defendant's cohorts set the fire, defendant filmed the crime so it could be posted on the internet. Defendant was on probation for that offense when he committed the trafficking and sex offenses in *Love I*. As we have discussed, in that case, defendant engaged in a months-long scheme in which he manipulated a minor into participating in an abusive online relationship, coerced her into sending him nude pictures with a mixture of assertions of love and threats, attempted to lure her away from home to engage in sexual acts, and attempted to dissuade her from testifying. Then, during the trial in that case, he escaped from custody and evaded capture until the following day. Next, after the jury returned a verdict against him in the sex crimes case, he not only made further attempts to dissuade witnesses, but made criminal threats against the victim's mother. Thus, the record provides a solid foundation for the trial court's pronouncement that defendant as "perhaps more than the exception of one other person that I've sentenced in the last eight years, represents an extraordinary threat to public safety."

In short, the trial court's imposition of a three strikes sentence in the instant case did not violate either the state or federal constitutional prohibition against a cruel or unusual sentence. Nor did the trial court's exercise of discretion to run this sentence consecutively to the sentence previously imposed in the sex crimes and escape cases. (See *People v. Retanan* (2007) 154 Cal.App.4th 1219, 1230–1231 [upholding sentence of 135 years to life for sex crimes against young girls]; *People v. Haller* (2009) 174 Cal.App.4th 1080, 1087–1094 [upholding aggregate sentence of 78 years to life for criminal threats, stalking, and assault with a knife].) While the defendant brought three strikes sentencing upon himself in a remarkably short period of time by committing a string of serious felonies against a minor victim and her mother, the ensuing sentences in these cases do not constitute cruel and unusual punishment under either the California or federal constitutions.

DISPOSITION

The judgment is affirmed.

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Banke, J.

We concur:

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Humes, P.J.

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Margulies, J.

A153233, *People v. Love II*